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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF T.W., J.W., and K.W., )  
Minor Children, and their Mother, MONIQUE )  
WILSON, and the Father of T.W., )  
EUGENE WHEATLEY, and the Alleged Father )  
J.W., ANTWAUN WHITNEY, )  
)  
MONIQUE WILSON, )  
)  
Appellant-Respondent, )  
)  
vs. )  
)  
MARION COUNTY OFFICE OF INDIANA )  
DEPARTMENT OF CHILD SERVICES, )  
)  
Appellee-Petitioner, and )  
)  
CHILD ADVOCATES, INC., )  
)  
Co-Appellee (Guardian ad Litem). )

No. 49A05-0609-JV-505

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APPEAL FROM THE MARION COUNTY SUPERIOR COURT  
The Honorable Victoria Ransberger, Judge Pro Tempore  
Cause No. 49D09-0512-JT-047238

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**March 19, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-respondent Monique Wilson appeals from the juvenile court's order terminating her parental rights with respect to her minor children, T.W., J.W., and K.W. Specifically, Wilson argues that there is insufficient evidence supporting the juvenile court's determination to terminate her parental rights. Finding no error, we affirm the judgment of the juvenile court.

**FACTS**

Wilson is the mother of T.W., born May 19, 1998, J.W., born November 7, 2002, and K.W., born October 9, 2004. The children have different fathers, none of whom have been at all involved in the children's lives and none of whom took part in the CHINS or termination proceedings.<sup>1</sup>

In March 2004, appellee-petitioner Indiana Department of Child Services (DCS) investigated a report of child abuse or neglect of T.W. and J.W. As a result of the investigation, on March 8, 2004, DCS filed a Child in Need of Services (CHINS) petition for both children because their home was dirty, Wilson had been arrested for child neglect and

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<sup>1</sup> It was established through paternity proceedings that T.W.'s father is Eugene Wheatley. J.W.'s alleged father is Antwaun Whitney, though paternity has not been established. K.W.'s alleged father is Jerry Young, though paternity has not been established, and apparently Young was not covered by the termination order. Neither Wheatley nor Whitney appeal the order terminating their parental rights.

was not at home to care for the children, and Wilson had failed to properly supervise the children. On May 26, 2004, Wilson admitted the CHINS petition, and on July 1, 2004, the juvenile court entered a participation decree ordering her to meet a number of requirements, including securing and maintaining an adequate source of income sufficient to support the children and obtaining and maintaining suitable housing for the children. DCS Ex. 10.

After K.W. was born on October 9, 2004, DCS investigated her situation because she was an after-born child following the CHINS determination with respect to T.W. and J.W. On October 26, 2004, DCS filed a CHINS petition for K.W. because Wilson did not have stable housing, was homeless, and had not sufficiently complied with the juvenile court's participation decree. Wilson admitted the CHINS petition on the day it was filed, and the juvenile court later entered a participation decree with substantially the same requirements as the decree concerning K.W.'s siblings.

Wilson was convicted of neglect of a dependent based on the incidents that caused DCS to remove T.W. and J.W. from her care. Although Wilson was eligible for home detention, she was incarcerated for nine months during the CHINS proceeding because she was homeless.

On December 7, 2005, DCS filed a petition to terminate the parental rights of Wilson, Wheatley, and Whitney, and a trial was held on August 2, 2006. At the time of trial, Wilson was residing with another adult in a one-bedroom apartment. In the months immediately prior to trial, in addition to being incarcerated, Wilson resided at four different addresses, and

the longest time she remained at any one residence was two months. She had been evicted from more than one residence and was homeless during portions of the CHINS proceeding.

Wilson has acknowledged that she suffers from depression and that she needs mental health services. After DCS removed the children from her care in 2004, Wilson became so depressed that she required psychiatric hospitalization. Wilson's home-based counselor and mental health services caseworker testified that she has a "flat affect," tr. p. 17, 43, meaning that "she doesn't really demonstrate a lot of emotions one way or another," id. at 27. Her flat affect hampered her ability to find employment or to recognize that she needed help. Id. at 31-32, 38.

Wilson's flat affect also led to minimal engagement with and minimal affection toward the children during supervised visits. Id. at 17. The home-based counselor testified that because Wilson failed to interact in a significant way with the children, the visits were "chaotic" and that J.W. "would yell and scream and through [sic] tantrums and try to leave the room." Id. at 26. The mental health services caseworker testified that Wilson was "non-nurturing, non-affectionate[,] and . . . had unrealistic age expectations," id. at 44, meaning that Wilson looked to eight-year-old T.W. to solve all of the children's problems. The DCS caseworker testified that at her visits with the children, Wilson "kind of [sat] back. Really not a lot of interaction. She sat there. . . . I was pretty much running around with little [J.W.] and didn't really see a lot of interaction or engagement going on but I didn't see that it distressed the children . . . ." Id. at 97.

Wilson participated in home-based counseling (HBC), and the program's goals were to help her to become gainfully employed, to transition the children back into her care, and to assist her in gaining insight into her problems and situation. Wilson was unable to secure employment, even with the assistance of the HBC program, and was unemployed at the time of trial. At the time of trial, Wilson did not have a plan to address her lack of housing or employment.

Following the trial, the juvenile court terminated Wilson's parental rights on August 2, 2006, and explained the reasons for its decision:

You [Wilson] haven't been able to demonstrate housing, employment, your interactions with your children. Multiple people report flat affect. Flat affect is an important term. It means there is something really going on with you that you need help for. . . . You have to take care of yourself. You have to move forward but my job and decision has [sic] to be based on all the factors including what's in the best interest of the kids. You have unresolved mental health issues. You've not [gone] to the therapy that you need to go to. You're not taking care of those mental health needs. You're not demonstrating any stability in housing and we're talking about a 2 year period of time. . . . You've shown no stability in employment and I think your depression [is] interfering. Honestly I think that your [sic] not getting the help you need and that's what [is] messing with your housing, your employment, all of that. The services that have been offered over the last 2 years are amazing . . . . [The caseworker has] been trying everyway [sic] she can. . . . You seem like a bright woman. You seem like you have some motivation that kind of comes and goes and again that's were [sic] depression comes in. . . . [I]t's not that you didn't do anything or you didn't try but I got little kids here that have to have permanence. You've got one that's been in care her whole life. You've got one that's been in care most of his life and you've got an 8 year old. It's not fair to them to wait while we let you figure out when is going to be a good time or if your motivation's going to be coming along good now. It's not fair to them and that's the balancing that the Judges are required to do in a termination case. . . . You've had a real commitment of services to try to help you and your family and not because anybody ever wrote you

off as worthless or not worthy of help in this situation but it's just we've got to do something for the kids that's permanent and that permanent plan is going to be adoption . . . .

Id. at 130-34. Wilson now appeals.

### DISCUSSION AND DECISION

As we consider Wilson's argument that the trial court erred in terminating her parental rights, we observe that when reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005).

Here, the trial court entered findings of fact and conclusions thereon in granting the petition to terminate Wilson's parental rights. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. We will set aside the trial court's judgment only if it is clearly erroneous. A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

Indiana Code section 31-35-2-4(b)(2) governs the content of petitions to terminate a parent-child relationship. At issue in this case is the requirement that DCS establish that:

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child . . . .

The DCS bears the burden of proving these allegations by clear and convincing evidence. Bester, 839 N.E.2d at 148. Clear and convincing evidence need not reveal that “the continued custody of the parents is wholly inadequate for the child’s very survival.” Egley v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1233 (Ind. 1992). Rather, it is sufficient to show by clear and convincing evidence that “the child’s emotional and physical development are threatened” by the respondent parent’s custody. Id. at 1234.

Wilson first argues that DCS presented insufficient evidence of her mental health problems. Specifically, she contends that Wilson was never officially diagnosed with a mental illness. A court may not terminate a parent-child relationship based solely on the parent’s mental illness; rather, DCS must show how a parent’s mental health condition affects her ability to parent her child. Matter of Tucker, 578 N.E.2d 774 (Ind. Ct. App. 1991).

At the trial, Wilson testified that during her time as an inpatient in a psychiatric facility, the medical professionals informed her that she suffered from depression. Tr. p. 111-12, 114. She also testified that she “went into a depression” when DCS removed T.W. and J.W. from her care. Id. at 108-09. For a period of time, Wilson took Zyprexa, a prescription antidepressant medication. Id. at 109. And regardless of whether she was actually diagnosed with depression, DCS presented evidence that her mental health detrimentally affected her ability to parent her children appropriately. In particular, DCS established that she has a flat affect and that during visitations with her children, Wilson was

withdrawn and uninvolved and was not nurturing or affectionate towards her children. She stated to the court that it is “just depression,” id. at 114, 130-31, demonstrating a marked lack of insight into the reality of her problem. Her depression inhibits her ability to be gainfully employed, to find stable housing, and to parent her children safely and appropriately. The juvenile court herein did not terminate Wilson’s parental rights because she suffers from depression; it terminated her parental rights, in part, because her mental health significantly impairs her ability to parent her children. The evidence in the record supports that conclusion.

Wilson next argues that in relying on her inability to find and maintain stable housing and employment, the juvenile court was impermissibly relying on her poverty as a reason for terminating her parental rights. We acknowledge that Wilson has found herself in dire economic straits and that, all too often, people of limited means in our society have neither sufficient resources nor support to parent their children adequately. Indeed, those in the lowest economic strata often have to carry the heaviest loads with the least help. But given the evidence in the record here, it is apparent that the juvenile court terminated Wilson’s parental rights not because she was poor but because she could not demonstrate the ability or means to provide economic support or a home suitable for the children if they were in her care. Specifically, the record reveals that during the CHINS proceeding, Wilson did not hold any job for more than a few weeks and was frequently homeless. At the time of trial, Wilson was unemployed and living with a friend in a one-bedroom apartment. We cannot say that

the trial court erred in concluding that Wilson's inability to maintain a consistent and stable residence and source of income posed a threat to the well-being of her children.

At trial, Wilson acknowledged that she was not prepared to take on the responsibilities of caring for her children. She begged, however, for "more time" so that she could "get [her] kids back . . . ." Tr. p. 49. We observe, as did the trial court, that Wilson is motivated—at times—to take the necessary steps to be reunited with her children. And we have no reason to disbelieve the sincerity of her desire to become a better parent. But two years passed between the time of the children's removal from Wilson's care and the time of the termination trial. Despite a wealth of services and people working to help her, Wilson was unable to achieve any stability during that time. It is unfair to ask the children to wait until Wilson is able to get—and benefit from—the help that she needs. See Matter of Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (observing that "[w]e are unwilling to put [the child] on a shelf until her parents are capable of caring for her appropriately[;] [t]wo years without improvement is long enough").

T.W., J.W., and K.W. need and deserve permanency, stability, and nurturing from their caretakers. Their guardian ad litem believes that "they would thrive in a very safe and stable environment. And just knowing that they're in a loving home and they're not going to be moved again. No more [upheavals]. I think they would really thrive." Tr. p. 123-24. The juvenile court correctly concluded that it is in their best interests to remove the uncertainty from their lives so that they can feel secure as they begin to develop long-term and continuous relationships with their prospective adoptive parents. Thus, although we

recognize the genuine heartache that Wilson will suffer as a result of this decision, we agree with the juvenile court that the children's interests must be paramount and that it is in their best interests to terminate her parental rights.

The judgment of the juvenile court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.